

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ELLEN GARBER,

Plaintiff,

Case Number 07-14835-BC
Honorable Thomas L. Ludington

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER DENYING PLAINTIFF'S MOTION TO SUPPLEMENT THE RECORD

On June 17, 2009, pursuant to a report and recommendation of Magistrate Judge Michael Hluchaniuk, the Court affirmed the Commissioner of Social Security's determination that pro se Plaintiff Ellen Garber was in part responsible for causing and accepting an overpayment of supplemental security income benefits. Plaintiff had not filed any objections to the report and recommendation. The same day, the Court entered judgment against Plaintiff and in favor of Defendant. Now before the Court is Plaintiff's motion to supplement the record [Dkt. # 37], filed on October 16, 2009. Defendant filed a response on October 28, 2009. For the reasons stated below, Plaintiff's motion will be denied.

In her motion, Plaintiff requests that this Court supplement the appeals record with "all my doctors' statements and treating facilities records as presented in the original Social Security file." Plaintiff contends that these records "are imperative to my case to show my mental and physical condition at the onset of obtaining SSI and how it relates," particularly to "show my case was portrayed." Plaintiff contends that these records should have been considered by this Court when it reviewed her case.

Significantly, all of the documents filed on the docket in this case, which were before this Court when it reviewed Plaintiff's claims, are available electronically for review by the Sixth Circuit Court of Appeals. Plaintiff has not suggested that there is a disagreement regarding "whether the record truly discloses what occurred in the district court," or that something material has been "omitted from or misstated in the record by error or accident." *See* Fed. R. App. P. 10(e). Rule 10(e) does not authorize new evidence to be introduced in the court of appeals that was not introduced in the district court. *S & E Shipping Corp. v. Chesapeake & Ohio Ry. Co.*, 678 F.2d 636, 641 (6th Cir. 1982). Moreover, Plaintiff's medical records concerning the prior disability determination do not relate to the determination of whether an overpayment occurred and whether Plaintiff was without fault. Finally, as the magistrate judge noted in his report and recommendation, to which Plaintiff did not object, providing documentation relating to the adjudication of a prior claim is generally the claimant's responsibility, not that of Defendant.

Accordingly, it is **ORDERED** Plaintiff's motion to supplement the record [Dkt. # 37] is **DENIED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: November 6, 2009

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on November 6, 2009.

s/Tracy A. Jacobs
TRACY A. JACOBS